

CAROL C. LAM
United States Attorney

ROBERT H. PLAXICO, California State Bar No. 054953
Assistant United States Attorney

HENRY C. DARMSTADTER
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-6481
Facsimile: (202) 307-0054
E-mail: Henry.C.Darmstadter@usdoj.gov

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

MICHAEL J. DOWLING,
Defendant.

Civil No. **06CV 0837** LAB RBB

**COMPLAINT FOR ERRONEOUS
REFUND**

COMES NOW the United States of America, by its undersigned counsel, and complains and
alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action in which the United States seeks to recover, with interest, an
erroneous refund of the 2004 federal income, social security and Medicare taxes in the total amount of
\$26,520.00 that was issued to the defendant, Michael J. Dowling, as a result of the misrepresentations
and fraudulent statements that Michael J. Dowling made on his 2004 Form 1040 tax return.

2. This civil action has been authorized by the Chief Counsel of the Internal Revenue
Service, a delegate of the Secretary of the Treasury, and commenced at the direction of the Attorney
General of the United States.

1 3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and IRC (26
2 U.S.C.) §§ 7401 and 7405.

3 4. Defendant Michael J. Dowling resides in San Diego, California, within the jurisdiction of
4 this Court.

5 5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

6 **GENERAL ALLEGATIONS**

7 6. On or about March 16, 2005, Michael J. Dowling signed and filed an IRS Form 1040
8 federal income tax return for the year 2004. An IRS Form 4852 Substitute for Form W-2 Wage and Tax
9 Statement, or Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans,
10 IRAs, Insurance Contracts, Etc., which Michael J. Dowling signed under penalty of perjury, was attached
11 to his 2004 Form 1040 tax return.

12 7. Implementing a false and fraudulent tax scheme promoted by Peter Eric Hendrickson,
13 Michael J. Dowling's self-prepared tax return falsely stated that Michael J. Dowling had no (1) wages,
14 tips or salaries; or (2) taxable income during 2004.

15 8. The Hendrickson scheme is based on the false and frivolous argument that the terms
16 "wages" and "income" for purposes of the federal income tax and for federal tax withholding are limited
17 to government employees. Hendrickson's theories about the supposed narrow application of federal
18 income-tax laws (including his arguments that wages are not income, and that only federal workers are
19 required to pay income taxes) have been uniformly and repeatedly rejected by the federal courts. As one
20 court recently said, the claim that wages are not income "has been rejected as many times as it has been
21 asserted." *Abdo v. United States*, 234 F. Supp.2d 553, 563 (M.D. N.C. 2002), *affirmed*, 63 Fed. Appx.
22 163 (4th Cir. 2003). Other courts long ago rejected Hendrickson's claim that wages and income for
23 federal income tax and withholding purposes mean only wages and income of government employees.
24 *See e.g., United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985) (the argument "that under 26 U.S.C.
25 § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous
26 reading of the statute. It is obvious that within the context of both statutes the word 'includes' is a term
27 of enlargement not of limitation, and the reference to certain entities or categories is not intended to
28

1 exclude all others.”); *McKinley v. United States*, 1992 WL 330407 (S.D. Ohio, Sept. 3, 1992) (“The
2 plaintiffs assert that only federal officers, federal employees, elected officials or corporate officers are
3 ‘employees’ who are considered to be taxpayers under the Internal Revenue Code. The plaintiffs argue,
4 in essence, that the explicit inclusion of federal officers and employees within the definition of
5 ‘employee’ for the purposes of the I.R.C. operates to exclude all others from the definition. Plaintiffs’
6 exhibit D-1 in their motion to affirm status determinations calls the Court’s attention to their position on
7 this issue by citing to T.R. 31.3401(C)-1, which explicitly includes the federal government within the
8 definition of employer. However, the plaintiffs’ interpretation of the law comes from a
9 misunderstanding of the law, and has been rejected by the federal courts. *E.g.*, *United States v. Latham*,
10 754 F.2d 747, 750 (7th Cir.1985); *Peth v. Breitzmann* [85-1 USTC ¶ 9321], 611 F. Supp. 50, 53
11 (D.C.Wis.1985). In fact, the term ‘employee’ as used in the I.R.C. does include private wage earners
12 *E.g.*, *Latham* [85- 1 USTC ¶ 9180], 754 F.2d at 750.”).

13 9. Contrary to his representations on his false Form 4852, Michael J. Dowling in fact did
14 receive a IRS Form W-2 Wage and Tax Statement for 2004 from his employer (Hitachi Data Systems
15 Corporation) that correctly reported his 2004 wages of \$91,994 and reported that \$19,504 in federal
16 income taxes, \$5,449 in social security taxes, and \$1,565 in Medicare taxes were withheld from his
17 wages in 2004. But Michael J. Dowling did not attach the W-2 form to his tax return or otherwise submit
18 it to the IRS. Instead, Michael J. Dowling attached the IRS Form 4852 (“Substitute for Form W-2, Wage
19 and Tax Statement, etc.”) to his 2004 tax return, signed the Form 4852 under penalty of perjury, and
20 falsely and fraudulently stated on the Form 4852 that Hitachi had paid him no (a) wages; (b) social
21 security wages; or (3) Medicare wages during 2004.

22 10. On or about May 6, 2005, based on Michael J. Dowling’s false and fraudulent
23 representations described above, the IRS issued a 2004 income-tax refund of \$26,520.00 to Michael J.
24 Dowling. This is the amount of the withheld federal income, social security and Medicare taxes listed on
25 the Form 4852 that Michael J. Dowling filed with his 2004 Form 1040 tax return.

26 11. Michael J. Dowling obtained the refund of \$26,520.00 by fraud and by misrepresentation
27 of material facts, as described above.

12. Because Michael J. Dowling misrepresented, on his 2004 Form 1040 tax return, that he received no wages or salaries during 2004, and claimed credit for the federal income, social security and Medicare taxes that were withheld from his wages or salary for 2004, the IRS should not have issued the refund, and therefore the issuance of the \$26,520.00 refund was an error.

13. As a result of the erroneous refund, the United States is entitled to judgment against Michael J. Dowling in the amount of \$26,520.00, plus interest from May 6, 2005, to the date of payment as provided by law.

WHEREFORE, the United States prays as follows:

A. That this Court determine that the United States erroneously issued a 2004 tax refund to Michael J. Dowling, in the amount of \$26,520.00;

B. That judgment be entered on behalf of the United States and against Michael J. Dowling in the amount of \$26,520.00, plus interest thereon as allowed by IRC § 6602 from May 1, 2005;

C. That the United States of America be awarded its reasonable attorneys' fees and costs incurred in this action; and

D. That the Court grant the United States such other and further relief as the Court may deem to be just and proper.

Dated this 7th day of April, 2006.

CAROL C. LAM
United States Attorney

HENRY C. DARMSTADTER
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-6481
Facsimile: (202) 307-0054